

## UNDER THE LENS

# Unwinding IL&FS: Debt resolution chugs along even after five years, may spill over to next fiscal

By Chahek Garg Dec 05, 2023, 04:45:00 AM IST



From left Clockwise, CS Rajan, Non-Executive Chairman, IL&FS; Nand Kishore, Managing Director, IL&FS; Malini Shankar, Director, IL&FS; Mr. Gurumoorthy Mahalingam, Director, IL&FS: image credit: ilfsindia.com

### Synopsis

While sale processes of some assets have progressed, IL&FS has faced significant delays in the InVIT route it took to resolve some of the road assets, as lenders, concessionaires didn't agree on the terms. Even as there are stiff targets for filing resolutions of remaining companies, at least two dozen are likely to drag on to FY25, show latest filings.

The resolution process of Infrastructure Leasing & Financial Services (**IL&FS**) is expected to drag beyond this financial year. This is because the proposed resolution of the troubled infrastructure lender through InvITs (infrastructure

investment trusts) and other key monetisation proposals are stuck in disputes.

Without these realisations, the group's resolution figures are likely to fall short of INR61,000 crore it has estimated. As many as 91 IL&FS entities, of the over 300 subsidiaries, are still to be resolved, according to the latest status report filed by the company to the National Company Law Appellate Tribunal (**NCLAT**).

The company, under the government-appointed board led by non-executive chairman CS Rajan, has said it expects to complete resolutions of 67 of these companies by this financial year. Resolution of 24 companies is expected to spill over to the next financial year.

The new board, which was tasked with resolving the troubled group that was on the brink of collapse in 2018, has told NCLAT that the overall debt resolution across the group is estimated to reach approximately INR61,000 crore. This figure aggregates to approximately 61.39% of the total external debt outstanding of INR99,355 crore.

**ILFS**, a systematically important non-banking finance company and a core investment firm registered with the Reserve Bank of India (RBI), as of October 15, 2018, comprised 302 entities, many of them special purpose vehicles (SPVs) floated to manage individual projects. Most of the debt obligations of IL&FS (INR57,000 crore) were with the public-sector banks and institutions. So, its collapse would have been posing a threat to the country's financial stability.

The government had quickly moved and appointed a board of eminent persons led by ace banker **Uday Kotak** to chart the course for the complex resolution process. Kotak and his colleagues had started by dividing the group companies in three broad buckets – red, amber and green – based on their ability to meet payment obligations. The mothership IL&FS is itself classified as a "red" entity, indicating that it is not able to meet all obligations (financial and operational), including payment obligations to its senior secured financial creditors.

Accordingly, under the resolution mechanism, the company is permitted to make only those payments necessary to maintain and preserve the 'going-concern' status.

While large numbers of amber and green entities have been resolved, a good number of red entities continue to remain unresolved. While Kotak and some of the original board members have moved on, Rajan and managing director Nand Kishor, both retired IAS officers, are managing the process.

## **Debt discharged by way of interim distribution**

Entity	Cash distributed	Entity	Cash distributed
ILFS Financial Services	4007	LFS Energy Development	586
Rapid Metro Rail Gurgaon South	1273	ILFS maritime infrastructure	160
Chennai Nashri Tunnelway	920	Vejas Power Projects	95
ILFS	810	IMICL Dighi Maritime	86
ILFS Transportation Networks	796	ILFS cluster development	20
Inox Wind Energy	650	Rohtas Bio Gas energy	8.4
Rapid Metro Rail Gurgaon	635	Skill Training Assessment	2

Figures in INR crore

Source: Status report filed with NCLAT

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### Resolutions so far

A publicly solicited bid process for the sale of IL&FS group's shareholdings was implemented as a part of asset monetisation. Various bidders showed interest in the shares of these entities. Over nine domestic group entities have been transferred to **InvIT** with the approval of the NCLT to be done in two phases.

As on September 30, 2023, the total debt discharged to creditors aggregates to INR34,977 crore. The debt discharged to creditors can be further categorised as debt resolved through monetisation and termination (where the H1 bidder or highest bidder takes over the entity), cancellation of non-fund-based limits and debt discharged by the way of interim distribution. The value of the InvIT units held by these entities aggregates to INR3,752 crore leaving them with cash balances of INR9,695 crore. In terms of the resolution framework, approval of NCLT is required to discharge debt of domestic group entities. Some resolutions have been approved but not closed yet and some remain pending for approval of the court, which hold a value of INR6,453 crore. The debt to be serviced by green entities aggregates to INR4,860 crore.

According to the report, there are 81 unresolved entities of IL&FS that still need to be filed with the NCLT. And another 10 offshore entities are left to be filed.

## Category of debt discharge

Category	Amount in INR crore
Monetisation measures	19,424

Release of fund and non-fund limits	6,521
Interim distribution	9,031
Value of Invt units	3,752
Cash balances	9,695
Resolution value of entities approved by court but pending closure	5,102
Resolution value of entities pending with court	1,351
Green entities	4,860
<b>Total</b>	<b>59,736</b>

Source: Status report filed with NCLAT

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### Asset sale issues

Jorabat Shillong Expressway Limited (JSEL) was subject to bidding and was revised and approved by Justice D K Jain on May 13, 2023, with the Sekura Roads Private Limited. The sale process was completed **in November with realisation of around INR 1343 crore.**

IL&FS subsidiary Chenani Nashri Tunnelway Limited's (CNTL) sale application, along with the applications filed by the bidder, Cube Highways, was scheduled to be listed before the NCLT, along with KSFL on December 12, 2023.

Road Infrastructure Company of Rajasthan Limited was recognised as a "red" entity and its 50% stake is proposed to be transferred to the Invt in which 10 bidders have shown interest in June 2023.

### Delay in INVITs

A year into the resolution process, in 2019, then chairman Uday Kotak had proposed the InVIT route to resolve the 10 road projects that did not receive bids.

Approvals were received to transfer these entities to a structure named Roadstar Infra Investment Trust. Of these, East Hyderabad Expressway (EHEL) had to be dropped due to expiry of the concession and the company going into arbitration proceedings.

The total debt resolution estimated upon transfer of the nine entities was around INR10,624 crore.

The transfer of relevant SPVs was approved by the NCLT in two phases.

In September 2021, NCLT approved the transfer of Moradabad-Bareilly Expressway (MBEL), Sikar Bikaner Highway (SBHL), Barwa Adda Expressway (BAEL), Baleshwar Kharagpur Expressway (BKEL) and Jharkhand Road Projects (JRPICL) to Roadstar.

In October 2022, NCLT approved transfer of Jharkhand Infrastructure Implementation (JIICL), Pune Sholapur Road Development (PSRDCL), Hazaribagh Ranchi Expressway (HREL) and Thiruvananthapuram Road Development (TRDCL).

However, even after clearance by the tribunal, only five entities – MBEL, PSRDCL, SBHL, HREL and TRDCL – have been transferred to the InvIT post receipt of the requisite approvals. “The process for transfer of the balance five entities to the InvIT is ongoing, though certain challenges are being faced in the process,” IL&FS said in its status update to the NCLAT filed on October 31.

BAEL, for instance, faced delay in approving debt restructuring and transfer of the entity to InvIT. BKEL lenders are not releasing the premium payable to NHAI and have been insisting that the highways authority waives the premium for the moratorium period. Due to a failure to receive annuities from the Jharkhand government and obtaining approval for transfer, JRPICL and JIICL struggle to be a part of InvIT.

Among others, SPVs like WGEL were alleged by NHAI for defects in maintenance and widening of the Rajkot-Jetkor national highway. NHAI has terminated the concession agreement for this project. The matter came under CCEI (Conciliation Committees of Independent Experts) for mediation and conciliation, but both the parties are unable to reach a common understanding.

The sale of ITPCL has also progressed significantly in the last few weeks. ITPCL, a subsidiary of IL&FS Energy Development Company Limited (IEDCL), is working on reorganising its debt according to the guidelines set by the RBI in 2019, known as the “Prudential Framework for Resolution of Stressed Assets.” To implement the restructuring plan, they’ve applied to the NCLAT for specific concessions and to make this plan binding for all creditors.

The IL&FS Group, which owns a 92.42% equity stake in ITPCL through IEDCL and IL&FS – along with FCCDs (foreign currency convertible debentures) worth INR240 crore owned by IEDCL – aims to divest its entire shareholding in ITPCL. As part of IL&FS's overall resolution strategy, ITPCL has restructured its outstanding debt with lender approval and is seeking approval from the NCLAT to transition from the “amber” to the “green” category company. Following negotiations between operational creditors and ITPCL, they have formulated an additional settlement plan for their acknowledged claims and are restarting the

process of selling stakes in the company. Expressions of interest have been invited for purchase of these stakes by December 18.

**IL&FS headquarter and other assets**

According to the NCLAT status report, there are many other challenges that IL&FS is facing in terms of debt repayment. This includes HDFC’s intervention in the sale of the iconic IL&FS Financial Centre at Mumbai’s Bandra Kurla Complex to the H1 bidder and disputes with shareholders like IPRWL, which is an SPV for transportation of water from the Mahanadi river in Cuttack to Paradip for Indian Oil Corporation’s refinery project. The report also states the pendency of approval by the NCLAT regarding the sale of various assets forming a part of respondent 1 group as well as 23 pending appeals towards the Supreme Court.

The new board, as part of its efforts to unravel the issues resulting in the financial mismanagement within the IL&FS Group, discovered that one of the primary challenges that plagued the IL&FS Group was the significant intra borrowings. From the records available it was also discovered that loans to some IL&FS Group entities were given by routing the loans through other IL&FS Group entities/ third parties. The new board in its meeting held on May 30, 2023, took a decision to unwind/collapse certain transactions with third-party borrowers, subject to the orders/approval of the NCLAT.

The NCLAT suggested that the company ought to first enter into requisite documentation and pass relevant accounting entries before the collapsing/unwinding of the subject third-party transactions can be approved/given effect. To this extent, IFIN is currently in the process of formulating the requisite documentation and issuing the ‘without prejudice proposals’ to the concerned third-party borrowers.

**The road ahead**

The NCLAT status report has also expressed the need of continuation of moratorium, as Individual creditors have access to cash trapped in escrow accounts and that might lead to preferential payments (including by way of unauthorised setoffs) being made. Such individual action needs to be curtailed to give the new board a fair opportunity to complete the resolution.

The new board still believes that it requires a “calm period” and continuation of the moratorium granted by the NCLAT vide its order dated October 15, 2018.

**Status of resolution of 302 entities**

Fully resolved (A)	Approved by courts; transaction closure pending (B)	Applications pending court approvals (C)	Entities resolved through court filings (A+B+C)	Entities remaining to be filed	Total
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	Balance entities pending (B)	Stage 1 approval (C)	Balance entities (A+B+C)		
Domestic	56	12	20	88	81
Offshore	122		1	123	10
<b>Total</b>	<b>178</b>	<b>12</b>	<b>21</b>	<b>211</b>	<b>91</b>

Source: Status report filed with NCLAT

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Out of the total 302 companies, 169 are domestic and 133 are offshore. Only a fraction of the domestic companies has been fully resolved and most of them are remaining to be filed, whereas majority of the offshore companies have been resolved.

## The road ahead for unresolved entities

Resolution mode	Balance entities (not resolved not filed)	Stage 1 NCLT filed	By Dec 31, 2023	By Mar 31, 2024	Beyond Mar 31, 2024
Entity monetisation	26	0	10	13	3
ITPCL and JWEL	6	0	0	6	0
Hold Co	6	0	0	0	6
Termination	5	1	2	0	2
Non-core	48	8	17	10	13
<b>Total</b>	<b>91</b>	<b>9</b>	<b>29</b>	<b>29</b>	<b>24</b>

Source: Status report filed with NCLAT

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The above graphic shows an analysis of all the appeals that have been filed, will be filed in future and approximate dates of resolution. Beyond March 31, 2024, 24 entities are expected to remain which have underlying complexities including delays in responses from joint-venture partners, multiple litigations/ arbitrations and holding companies wherein underlying entities need to be resolved. Stakeholders will hope that Rajan and his colleagues wrap it up before the sixth anniversary.

*(Graphics by Sadhana Saxena)*